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May 10, 2024

VIA EMAIL and CERTIFIED MAIL/RETURN RECEIPT:

Ike Westfall

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TEETOR WESTFALL, LLC

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Columbus, Ohio 43235

T: 614.412.4000 F: 614.412.9012

Re: Brooke N. Mann v. LNK Box Group, Inc., et al.

Case No. 2:22-cv-02553

Judge: Judge James L. Graham | Magistrate Judge Elizabeth Preston Deavers

FMG No. 365.109450

REQUEST FOR TENDER OF DEFENSE AND INDEMNIFICATION

Dear Ike:

Please accept this formal written request by Steve and Laura Trickle and Trickle Productions, LLC (collectively "Trickle Productions") that, per paragraphs 8 and 9 of the Terms and Conditions of Agreement for Services ("Agreement") between LNKBox Group, Inc. ("LNKBox") and Apex Event Management, LLC ("Apex"), LNKBox assume the defense of Trickle Productions and indemnify Trickle Productions in any and all sums Trickle Productions might be required to pay to Plaintiff, Brooke Mann, by way of settlement or judgment regarding the above-referenced matter.

On or about September 24 through 26, 2021, Plaintiff attended a Lost Lands Event ("Event") where, at one point, she boarded a patron transporter (*i.e.*, a tractor pulling two trams) driven by Ryan Axford. LNKBox provided the patron transportation as well as the driver, Mr. Axford. While driving the patron transporter, Mr. Axford lost control causing the tractor and two trams to overturn allegedly permanently injuring the Plaintiff. As a result, Ms. Mann brought



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negligence and recklessness claims against LNKBox, Trickle Productions, and other named Defendants.¹

Per paragraph 8 of the Terms and Conditions of the Agreement between LNKBox and Apex,² LNKBox agreed to defend, indemnify, and hold harmless Apex, the venue, and sponsors and their respective indemnitees from and against any and all damages, claims, losses, and causes of action:

8. **Indemnification.** VENDOR AGREES TO INDEMNIFY, DEFEND AND FOREVER SAVE AND HOLD HARMLESS THE COMPANY, ITS AFFILIATES OR RELATED ENTITIES, ARTIST(S), CO-PROMOTERS (IF ANY), THE VENUE, AND SPONSORS AND THEIR RESPECTIVE PRINCIPALS, SHAREHOLDERS, MEMBERS, PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, TENANTS, AGENTS, CONTRACTORS AND VOLUNTEERS (SOMETIMES COLLECTIVELY REFERRED TO HEREIN AS THE "INDEMNITEES" AND INDIVIDUALLY AS A "INDEMNITEE"), FROM AND AGAINST ANY AND ALL DAMAGES, CLAIMS, LOSSES, DEMANDS, COSTS, EXPENSES (INCLUDING ATTORNEYS, FEES AND COSTS), OBLIGATIONS, LIENS, LIABILITIES, ACTIONS AND CAUSES OF ACTION, THREATENED OR ACTUAL, WHICH ANY ONE OF THE INDEMNITEES MAY SUFFER OR INCUR ARISING DIRECTLY OR INDIRECTLY OUT OF OR IN CONNECTION WITH THE PERFORMANCE OF THE SERVICES OR THE FAILURE OF VENDOR OR ITS OFFICERS, DIRECTORS, SHAREHOLDERS, OWNERS, EMPLOYEES, REPRESENTATIVES, AGENTS, CONTRACTORS OR VOLUNTEERS ("REPRESENTATIVES") TO PERFORM THE SERVICES

IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT, EXCEPT TO THE EXTENT ARISING FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF COMPANY. THE FOREGOING INDEMNIFICATION SHALL SURVIVE ANY TERMINATION OR THE EXPIRATION OF THE TERM OF THIS AGREEMENT.

See, pp. 4-5, Attachment B.

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¹ A copy of the First Amended Complaint is annexed as Attachment A.

² The Agreement is annexed as Attachment B.



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Further, per paragraph 9 of the Terms and Conditions of the Agreement, LNKBox was required to name Steve and Laura Trickle, Legend Valley, LLC, and Trickle Productions as additional insureds.

9. **Insurance.**

a. Without in any way limiting or altering the indemnification requirements of Vendor under or pursuant to this Agreement, Vendor shall, at its sole cost and expense, procure and maintain in force with duly licensed insurance carriers the following insurance for the Term: (i) a commercial general liability insurance policy covering bodily injury and property damage liability, personal and advertising injury liability and errors and omissions injury liability, with minimum limits of not less than Two Million Dollars (US\$2,000,000) per occurrence and Five Million Dollars (US\$5,000,000) in the aggregate, including a waiver of subrogation; (ii) to the extent applicable, worker's compensation insurance coverage adequate to comply with all statutory requirements covering all persons employed by Vendor hereunder and employer's liability with minimum limits of at least One Million Dollars (US\$1,000,000), including a waiver of subrogation; and (iii) to the extent applicable as it would pertain to the Services, business auto liability insurance with a limit of not less than One Million Dollars (US\$1,000,000) combined single limit providing coverage for all owned, hired and borrowed automobiles.

b. Within five (5) business days of the Effective Date, Vendor shall deliver to Company certificates of insurance evidencing the existence of the insurance required by this Agreement and with an endorsement which shall endorse Apex Event Management, LLC, Lost Lands Festival, Excision, Steve and Laura Trickle, Legend Valley, LLC, Trickle Productions LLC, Madison House Presents, LLC, AEG Presents, LLC and Anschutz Entertainment Group, Inc., and each of their respective parents, affiliates, subsidiaries, officers, directors, representatives, shareholders, members, agents, employees, subcontractors and any other party reasonably designated by Company as an additional insured under the policies in sub-paragraphs (i)-(iii) above. Such certificates shall also provide that such coverage will not be canceled or the subject of a material adverse amendment without at least ten (10) days prior written notice to Company. Upon any cancellation and/or material adverse amendment of any such insurance coverage, and prior to the effective date thereof, Vendor will deliver evidence of replacement insurance to Company.

See, *Id.*, p. 5.

Also, per LNKBox's Ategrity policy, see, p. 1/5, CX 00 01 04 13, Attachment C,³ any additional insured under the underlying policy automatically becomes an additional insured under the excess policy. As such, please consider this letter as a tender to LNKBox's excess carrier as well.

³ The Ategrity Policy is annexed as Attachment C.



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Apex hired LNKBox to provide patron transportation at the Event. See p. 1, Section "Services" of the Agreement. LNKBox provided patron transportation including the trams and the driver. The performance of LNKBox forms a valid contract and, as such, LNKBox is bound by its terms, including a duty to defend and indemnify Apex, the venue and its sponsors and their respective indemnities (which includes Trickle Productions) from and against any and all claims which arise directly or indirectly out of or in connection with the performance of the services or failure to perform the services in conformity with the Agreement. See, pp. 4-5, Attachment B. Further, LNKBox was required to name Steve and Laura Trickle, Legend Valley, LLC, and Trickle Productions, LLC as additional insureds. See, p. 5, Attachment B. Lastly, per the Ategrity Policy, CX 00 01 04 13, Section I – COVERAGES, 1. Insuring Agreement, subsection d, any additional insureds in the underlying policy are also additional insureds under the Ategrity Policy.

Per Ohio law, this letter serves as proper and timely notice to LNKBox that Trickle Productions is seeking indemnification from LNKBox. *Portsmouth Insurance Agency v. Medical Mutual of Ohio*, 188 Ohio App.3d 111, 2009-Ohio-941, at ¶ 19; *Globe Indemn. Co. v. Schmitt*, 142 Ohio St. 595, 53 N.E.2d 790 (1944).

Thus, based on the above, Trickle Productions requests that LNKBox assume the defense of and indemnify Trickle Productions. Please forward this request to your insurance carrier immediately with instructions to the carrier to assume the defense of Trickle Productions as outlined above.

Your prompt attention to this request is required and appreciated.

Respectfully,

FREEMAN, MATHIS & GARY LLP

/s/ Doug Holthus

Doug Holthus

- and -

/s/ Lisa R. House

Lisa R. House